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TAGS: [EFIN](#) [ECON](#) [PREL](#) [PGOV](#) [ECIN](#) [BK](#)
SUBJECT: BOSNIA: CONSTITUTIONAL COURT RULING AFFIRMS
REVENUE ALLOCATION LAW

REF: A. A) STATE 55442

[1](#)B. B) SARAJEVO 375

Classified By: Ambassador Douglas L. McElhaney for Reason 1.4(B).

[1](#)1. (C) Summary: On April 19, the Vital National Interest (VNI) panel of the Federation Constitutional Court issued a formal decision upholding the USG-backed Law on Revenue Allocation (Ref B). With a resounding majority, the panel dismissed HDZ claims that objective and transparent revenue allocation violates Croat interests by a vote of 6-1. The Court also reportedly resolved procedural uncertainties caused by amendments to the Federation Constitution imposed by OHR in 2002 that could have given each of Bosnia's constituent peoples an ethnic veto over all legislation, with disastrous implications for future reform (Ref A). Specifically, the Court has determined that a finding of VNI requires a two-thirds majority of the judges on the panel, although this has not yet been tested. That is good news for draft public broadcasting (PBS) legislation, an explicit requirement for an EU Stabilization and Association Agreement (SAA) and subject of another HDZ VNI claim. Companion legislation at the state level was also subject to a VNI challenge, which was overcome only because the state-level Constitutional Court decides such matters by majority vote. The Court's handling of this case, despite OHR's refusal to interpret its own confusing and contradictory amendments, is a strong sign of the growing domestic constituency for reform, especially when tied to EU accession. End Summary.

One Good Decision...

[1](#)2. (SBU) In a much anticipated decision, the Federation Constitutional Court released its formal opinion on an HDZ VNI challenge to the USG-backed law on revenue allocation on April 19. The Court voted six to one (with the majority including one of the two Croat judges on the panel) to reject the HDZ's assertion that objective and transparent revenue allocation harms Croat interests. Helpfully, the Court also pre-emptively ruled that the law is constitutional, depriving the HDZ of its last available legal challenge to the legislation. The law now goes into force, with the Federation government required to retroactively adjust revenue allocation to comply with the law as of February 14, the date parliament approved it.

Deserves Another

[1](#)3. (C) Although the overwhelming majority negated the need,

the Court also reportedly removed a key uncertainty caused by OHR-imposed amendments to the Federation constitution in 2002: Exactly how many judges from the seven judge panel (which is composed of two Bosniaks, two Croats, two Serbs and one "other") are required for a VNI finding? The provisions in question first call for a 2/3 majority of judges to decide, within one month of a case held to be admissible, to uphold a VNI claim. However, the next article contains a reference to the need for "at least two judges" for a finding of VNI. The resulting confusion opened space for a possible interpretation that only two judges were needed to uphold a VNI claim, in effect giving each of Bosnia's main constituent peoples an ethnic veto over all legislation. Not surprisingly, the HDZ strongly favored such an interpretation.

¶4. (C) Unable to understand the VNI procedures as written and mindful of the broader issues at stake, the Court initially asked for clarification from parliament's Constitutional Committee. The Committee could not deduce the intent of the amendments either so both turned to OHR for assistance. In a March 31 letter to High Representative Christian Schwarz-Schilling, Court President Nedjo Milicevic wrote that, "According to acceptable legal standards, the only competent institution that can interpret a provision is the institution that passed the provision."

¶5. (C) Despite OHR's leading role in drafting the amendments in question, the High Rep decided that this was an issue of "local ownership." The High Rep did, under considerable prodding from the U.S. and others, point the Federation Court toward the its counterpart in the RS. The RS Constitutional Court operates under the exact same language and has already ruled on a number of VNI cases. It requires a two-thirds majority for a finding of VNI. In the end, RS practice was decisive in convincing the Federation

Constitutional Court to adopt similar procedures, although this decision has yet to be put into practice.

Next Up, PBS

¶6. (C) The Court will now turn to its second VNI challenge, draft public broadcasting (PBS) legislation that is a requirement for an EU Stabilization and Association Agreement (SAA). This case will sorely test the Court's new procedures in the face of strong political pressure. The HDZ is adamantly opposed to the law, insisting that anything less than a separate public television channel broadcasting in the Croatian language damages Bosnian Croats. Unlike the revenue allocation law, the HDZ has a plausible legal basis for its PBS challenge -- the OHR-imposed amendments to the Federation constitution define "public information systems" as an explicit vital national interest. The HDZ filed a similar VNI case against companion state-level PBS legislation. This challenge was only overcome because the state-level Constitutional Court decides such matters by majority vote.

Comment

¶7. (C) The recent ruling clears the last legal obstacle to the revenue allocation law, which will radically alter BiH's political and economic playing field (Ref B). Resolution of the broader VNI procedural issue is an even bigger victory -- granting BiH's constituent peoples an ethnic veto in the Federation risked snarling all reform efforts in petty politics. The Court's professionalism under enormous pressure is a reflection of the growing domestic constituency for reform, especially when linked to EU accession. End Comment.